United States Department of Labor
Employees' Compensation Appeals Board

D.J., Appellant	)	
and	)	**Docket No. 17-0180**
	)	**Issued: March 14, 2017**
U.S. POSTAL SERVICE, POST OFFICE, Kansas City, MO, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 3, 2016 appellant filed a timely appeal of a September 26, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merit decision of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish left foot, left leg, and lower back injuries causally related to a June 6, 2016 employment incident.

FACTUAL HISTORY

On June 10, 2016 appellant then a 60-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on June 6, 2016 "totes" fell from a floor truck which caused her to lose her balance and fall, injuring her left foot, leg, and lower back. She did not immediately stop work.

[1] 5 U.S.C. § 8101 *et seq.*

Appellant was treated in the emergency room on June 16, 2016 by Dr. Todd Hayes, Board-certified in emergency medicine, who diagnosed low back pain and prescribed a pain medicine. She was given a treatment pamphlet for neck and back pain. In a June 16, 2016 return to work slip, Dr. Hayes noted treating appellant in the emergency room and advised that she could return to work in one day. Appellant submitted several prescription receipts.

On July 1, 2016 appellant was treated by a nurse practitioner. The report noted a recent fall that caused low back and hip pain and ice therapy was recommended. On July 1, 2016 the nurse practitioner diagnosed left-sided low back pain with left-sided sciatica and referred appellant for physical therapy. On August 4, 2016 she treated appellant for left-sided low back pain with left-sided sciatica. On July 28, 2016 appellant was seen by a physical therapist for a lumbar evaluation.

On July 1, 2016 Dr. Srilatha Gannavaram, a Board-certified internist, diagnosed left-sided low back pain with left-sided sciatica and referred appellant for physical therapy.

On August 18, 2016 appellant submitted a claim for compensation (Form CA-7) for intermittent partial disability, for 1.95 hours of leave without pay (LWOP) for July 28, 2016 and 8 hours of LWOP for August 3 and 4, 2016. The employing establishment provided a time analysis form (Form CA-7a) noting that appellant had used 1.95 hours of LWOP for July 28, 2016 and 8 hours of sick leave for August 3 and 4, 2016.

By letter dated August 19, 2016, OWCP advised appellant that her claim was originally received as a simple, uncontroverted case which resulted in minimal or no time loss from work. It indicated that her claim was administratively handled to allow medical payments up to $1,500.00. However, the merits of the claim had not been formally adjudicated. OWCP advised that because a claim for wage loss had been received, appellant's claim would be formally adjudicated. It requested that she submit additional information including a comprehensive medical report from her treating physician which contained a reasoned explanation as to how the specific work factors or incidents identified by appellant had contributed to her claimed injuries.

Appellant submitted an excuse slip dated July 28, 2016, from a provider whose signature is illegible, who noted that appellant was excused from work secondary to attending physical therapy.

In a September 12, 2016 attending physician's report, Dr. Gannavaram noted that appellant was injured on June 6, 2016 when she lost her balance and fell on her left hip. She diagnosed low back pain with left-sided sciatica. Dr. Gannavaram checked a box marked "yes" that appellant's condition was caused or aggravated by an employment activity and indicated "fall." She noted that appellant was totally disabled from work. On September 12, 2016 Dr. Gannavaram saw appellant in her clinic.

In a September 26, 2016 decision, OWCP denied the claim finding that appellant failed to submit medical evidence establishing that a medical condition was diagnosed in connection with the accepted work incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[2]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that her actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[3]

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[4]

ANALYSIS

It is undisputed that on June 6, 2016, while working as a clerk, "totes" on a floor truck fell causing appellant to lose her balance and fall. However, the Board finds that she failed to submit sufficient medical evidence to establish that this work incident caused or aggravated her diagnosed back condition. In a letter dated August 19, 2016, OWCP requested that appellant submit a comprehensive medical report from her treating physician which included a reasoned explanation as to how the accepted work incident had caused her claimed injury.

Appellant submitted an attending physician's report from Dr. Gannavaram dated September 12, 2016, who noted appellant was injured on June 6, 2016 when she lost her balance and fell on her left hip. Dr. Gannavaram diagnosed low back pain with left-sided sciatica and checked a box marked "yes" that appellant's condition was caused or aggravated by an employment activity and indicated "fall." The Board has held that when a physician's opinion on causal relationship which consists only of checking "yes" to a form question, without explanation or rationale, is of diminished probative value and is insufficient to establish a claim.[5]

[2] *Gary J. Watling*, 52 ECAB 357 (2001).

[3] *T.H.*, 59 ECAB 388 (2008).

[4] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[5] *D.D.*, 57 ECAB 734 (2006); *Sedi L. Graham*, 57 ECAB 494 (2006).

On July 1, 2016 Dr. Gannavaram diagnosed left-sided low back pain with left-sided sciatica and referred appellant for physical therapy. Similarly, on September 12, 2016, she noted treating appellant at her clinic. Dr. Gannavaram's notes are insufficient to establish the claim as she did not provide a history of injury[6] or specifically address whether appellant's employment activities had caused or aggravated a diagnosed medical condition.[7]

Emergency room notes from Dr. Hayes dated June 16, 2016 diagnosed low back pain and prescribed pain medicine. In a June 16, 2016 return to work note, he indicated treating appellant in the emergency room and advised that she could return to work in one day. These notes are insufficient to establish appellant's claim as Dr. Hayes did not provide a history of injury[8] or specifically address whether her employment activities had caused or aggravated a diagnosed medical condition.[9]

Appellant was treated by a nurse practitioner on July 1 and August 4, 2016, who diagnosed left-sided low back pain with left-sided sciatica and referred appellant for physical therapy. Similarly, on July 28, 2016 she was seen by a physical therapist for a lumbar evaluation. The Board has held that notes signed by a nurse, nurse practitioner, or a physical therapist are not considered medical evidence as they are not physicians under FECA.[10] Thus, these treatment records are of no probative medical value in establishing appellant's claim.

The remainder of the medical evidence is of limited probative value as it fails to provide a physician's opinion on the causal relationship between appellant's work incident and her diagnosed low back condition.[11] For this reason, this evidence is insufficient to meet her burden of proof.

An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated, or aggravated by her employment is sufficient to establish causal relationship. Causal relationships must be established by

[6] *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

[7] *A.D.*, 58 ECAB 149 (2006); Docket No. 06-1183 (issued November 14, 2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[8] *Supra* note 6.

[9] *A.D., supra* note 7.

[10] *See David P. Sawchuk*, 57 ECAB 316, 320n.11 (2006) (lay individuals such as physician assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law). *See also Paul Foster*, 56 ECAB 208 (2004) where the Board found a nurse practitioner was considered a physician under FECA.

[11] *See S.E.*, Docket No. 08-2214 (issued May 6, 2009) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

rationalized medical opinion evidence.[12] Appellant failed to submit such evidence and therefore she has not met her burden of proof.

On appeal appellant indicated that the employing establishment was not concerned about her injury and did not inquire if she needed medical treatment on the date of injury. She indicated that she was misled by the forms needed and submitted all medical information to OWCP in a timely manner. As found above, the medical evidence does not establish that appellant has a diagnosed medical condition that is causally related to her accepted work incident. She has not submitted a physician's report which describes how the incident on June 6, 2016 caused or aggravated a low back condition.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish left foot, left leg, and lower back injuries causally related to a June 6, 2016 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the September 26, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 14, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

[12] *See Dennis M. Mascarenas*, 49 ECAB 215 (1997).